

## CIVIL COVER SHEET

10-CV-3510

The JS 44 civil cover sheet and information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MARTA NAZARIO

(b) County of Residence of First Listed Plaintiff PHILADELPHIA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

TOVA WEISS, BLITSSTEIN & WEISS, P.C., 648 SECOND STREET PIKE, SOUTHAMPTON, PA 18966, (215) 364-4900

## DEFENDANTS

ACB AMERICAN, INC.

10 3510

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. SECTION 1692 ET. SEQ.

Brief description of cause:  
FAIR DEBT COLLECTION PRACTICES ACT.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

JUL 16 2010

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3333 N. Lee Street, Philadelphia, PA 19133 **10** **361**

Address of Defendant: 551 Winton Avenue, Convington, KY 41015

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases

11. ☒ All other Federal Question Cases

(Please specify)

**FAIR DEBT COLLECTION PRACTICES ACT**

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, TOM WEISS, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 7/13/10

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

JUL 16 2010

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/13/10

Attorney-at-Law

Attorney I.D.#



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Marta Nazario

CIVIL ACTION

v.

**10****351**

ACB American, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

07/13/2010**Date**Tova Weiss, Esquire**Attorney-at-law**Marta Nazario**Attorney for Plaintiff**(215) 364-4900**Telephone**(215) 364- 8050**FAX Number**Weiss@lawyersbw.com**E-Mail Address**

JUL 16 2010

\$350

JCJ

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED

JUL 16 2010

MICHAEL E. KUNZ, Clerk  
Dep. Clerk

MARTA NAZARIO  
3313 N. Lee Street  
Philadelphia, PA 19133

Plaintiff

Civil Action No.:

v.  
ACB AMERICAN, INC.  
4351 Winton Avenue  
Convington, KY 41015

and

JOHN DOES 1-10

and

XYZ CORPORATIONS

Defendant

COMPLAINT

VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT  
15 U.S.C. Section 1692 et seq.

INTRODUCTION

1. This is an action for damages brought by a Plaintiff, Marta Nazario, a consumer (hereafter "Plaintiff") against Defendant, ACB American, Inc.'s (hereinafter "Defendant") violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq. (hereinafter "FDCPA"). The FDCPA prohibits debt collectors from *inter alia* engaging in abusive, deceptive and unfair collection practices.

5

**JURISDICTION AND VENUE**

2. Jurisdiction of this Court arises under 15 U.S.C. Section 1692k(d), 28 U.S.C. Section 1331, 1337 and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. Section 1367. Venue is proper in accordance with 28 U.S.C. Section 1391(b).

**PARTIES**

3 All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

4. Plaintiff is Marta Nazario, an adult individual with a current address of 3313 N. Lee Street, Philadelphia, PA 19133.

5. Defendant(s) is ACB American, Inc. , a business engaged in the practice of debt collection, said Defendant regularly conducts business in Philadelphia County and has a principal place of business located at 4351 Winton Avenue, Covington, KY 41015.

**FACTUAL BACKGROUND**

6. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

7. On or about June 22, 2010, within 365 days from the date of the filing of this Complaint, Defendant contacted Plaintiff by telephone and left one or more computerized and/or live voicemail messages with a third (3<sup>rd</sup>) party/ies Rosa Cosme and Wilfredo Rodriques at phone number 214-484-2389. Said telephone message read substantially as follows:

*"If you are not Martha Nazario please hang up or disconnect...If you are Martha Nazario please continue to listen to this message...there will now be a three (3) seconds pause in this message. By continuing to listen to this message you acknowledge you are Marth Nazario. This is ACB American. This is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact me about an important business matter at 1-888-861-6581. Again the number is 1-888-861-6581. Thank you. Good-bye."*

8. On or about July 7, 2010 within 365 days from the date of the filing of this Complaint, Defendant contacted Plaintiff by telephone and left one or more computerized and/or live voicemail messages with a third (3<sup>rd</sup>) party party/ies Rosa Cosme and Wilfredo Rodriques at phone number 214-484-2389. Said telephone message read substantially as follows:

*"Hello, this is a message for Marta Nazario. If you are not Marta Nazario please hang up or disconnect. If you are Marta Nazario please continue to listen to this message. There will now be a three (3) second pause in this message...By continuing to listen to this message you acknowledge you are Marta Nazario. This is ACB American, this is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact me about an important business matter at 1-888-861-6581. Again, the number is 1-888-861-6581. Thank you. Good-Bye."*

9. On or about July 8, 2010 within 365 days from the date of the filing of this Complaint, Defendant contacted Plaintiff by telephone and left one or more computerized and/or live voicemail messages with a third (3<sup>rd</sup>) party party/ies Rosa Cosme and Wilfredo Rodriques at phone number 214-484-2389. Said telephone message read substantially as follows:

*"Hello, this is a message for Marta Nazario. If you are not Marta Nazario please hang up or disconnect. If you are Marta Nazario please continue to listen to this message. There will now be a three (3) second pause in this message...By continuing to listen to this message you acknowledge you are Marta Nazario. This is ACB American, this is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact me about an important business matter at 1-888-861-6581. Again, the number is 1-888-861-6581. Thank you. Good-Bye."*



10. On or about July 8, 2010 within 365 days from the date of the filing of this Complaint, Defendant contacted Plaintiff by telephone and left one or more computerized and/or live voicemail messages with a third (3<sup>rd</sup>) party party/ies Rosa Cosme and Wilfredo Rodriques at phone number 214-484-2389. Said telephone message read substantially as follows:

*"This message is for Marta Nazario. If this is not Marta Nazario please hang up. I will now wait for three (3) seconds...My name is Leslie with ACB American we are professional debt collectors and this call is in reference to the collection of a debt. Please contact me regarding your account number JO0476. My telephone number is 1-800-899-8745 ext.1720. Thank you."*

11. On or about July 9, 2010 within 365 days from the date of the filing of this Complaint, Defendant contacted Plaintiff by telephone and left one or more computerized and/or live voicemail messages with a third (3<sup>rd</sup>) party party/ies Rosa Cosme and Wilfredo Rodriques at phone number 214-484-2389. Said telephone message read substantially as follows:

*"This message is for Marta Nazario, if this is not Marta please hang up now I will pause for thirty (30) seconds...Hello Marta my name is Austin I am calling with ACB AMERICAN we are a professional debt collector and this call is in reference to the collections of a debt. Please contact my office regarding account number JO0476 at 1-800-899-8745 ext. 1708."*

**COUNT ONE:**  
**VIOLATION OF THE FDCPA**  
**15 USC 1692 et. seq.**

12. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

13. Plaintiff is a consumer debtor as defined by the Fair Debt Collection Practices Act (FDCPA), 15 USC 1692a(3).

14. Defendant is a debt collector as defined by the FDCPA, 15 USC 1692a(6).

15. At all times mentioned herein, Defendant was attempting to collect on an alleged consumer “debt” against Plaintiff through “communications” as defined by FDCPA 15 U.S.C. Section 1692a(2) and 1692a(5).

16. Defendant violated the FDCPA, 15 U.S.C Sections, 1692b(1), 1692b(2), 1692c(a)(1), 1692c(b), 1692d, 1692d(5), 1692e(10) and 1692f in the following manner:

- (a) Communicating with a person other than the consumer and failing to identify him/herself and failing to confirm or correct location information;
- (b) Communicating with a person other than the consumer and stating that the consumer owes a debt;
- (c) Communicating with a third party;
- (d) Communicating with the Plaintiff at a time or place known or which should be known to be inconvenient to the consumer Plaintiff;
- (e) Engaging in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt; and
- (f) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number;
- (g) Using false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer; and



- (h) Otherwise using false, deceptive or misleading and unfair or unconscionable means to collect or attempt to collect a debt.

17. Defendant engaged in per se violations of the FDCPA, 15 U.S.C. sections 1692b 1692b(1), 1692b(2), 1692c(a)(1), 1692c(b), 1692d, 1692d(5), 1692e(10) and 1692f. See Foti v. NCO Financial Systems, Inc., 424 F. Supp.2d 643 (S.D.N.Y. 2006); INMAN V. NCO FINANCIAL SYSTEMS, INC., United States District Court for the Eastern District of Pennsylvania, Docket Number NO. 08-5866; Edwards v. NIAGARA CREDIT SOLUTION, INC., United States Court of Appeals for the Eleventh Circuit, Docket Number 08-17006.
18. Defendant's actions and/or omissions as described above were malicious, intentional, willful, wanton, reckless and negligent against Plaintiff.
19. Plaintiff was distressed and suffered from embarrassment, stress and anxiety.
20. Defendant is liable for the acts committed by its agents under the doctrine of respondent superior because Defendant's agents were acting within the scope of their employment with Defendant.
21. In the alternative, Defendant(s) is liable for the conduct of its agents / employees under the theory of joint and several liability because Defendant and its agents / employees were engaged in a joint venture and were acting jointly and in concert.
22. Any mistake made by Defendant would have included a mistake of Law.
23. Any mistake made by Defendant would not have been a reasonable or bona fide mistake.

24. Defendant is liable to Plaintiff for money damages pursuant to 15 U.S.C. Sections 1692k(a)(1), 1692k(a)(2)(A) and attorney's fees pursuant to 15 U.S.C. Section 1692k(a)(3).

WHEREFORE, Plaintiff respectfully requests that the following relief be granted:

- (a) Actual damages, including but not limited to phone, fax, stationary, postage, etc. pursuant to 15 U.S.C. Section 1692k(a)(1);
- (b) Statutory Damages pursuant to 15 U.S.C. Section 1692k(a)(2)(A);  
Attorney's Fees and costs pursuant to 15 U.S.C. Section 1692 k(a)(3). To date Attorney's Fees at a rate of \$350.00 per hour plus costs.

Plaintiff's attorney fees continue to accrue as the case move forward.

- (d) All other relief that the Court deems just and proper.

**COUNT II**  
**INVASION OF PRIVACY**

25. All previous paragraphs of this Complaint are incorporated by reference as though fully set forth herein.

26. Defendant's continuous and repeated telephone calls to third parties constitutes an invasion of privacy.


27. As a result of Defendant's conduct, as pleaded above, Plaintiff sustained and continues to sustain damages and emotional distress.

WHEREFORE, Plaintiff demands judgment in her favor and against Defendant and seeks compensatory and punitive damages against Defendant and all other relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

29. Plaintiff demand trial by jury on all triable issues.

Respectfully Submitted,  
**BLITSHTein & WEISS, P.C.**

By:   
Tova Weiss, Esquire  
Iriana Blitshtein, Esquire  
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Fax (215)364-8050  
Attorneys for Plaintiff

Date: July 13, 2010